

ASSEMBLY BILL

No. 2029

Introduced by Assembly Members Dahle and Gordon

February 16, 2016

An act to amend Section 4584 of the Public Resources Code, relating to timber harvesting.

LEGISLATIVE COUNSEL'S DIGEST

AB 2029, as introduced, Dahle. Timber harvesting plans: exemptions.

The Z'berg-Nejedly Forest Practices Act of 1973 prohibits a person from conducting timber operations, as defined, unless a timber harvesting plan prepared by a registered professional forester has been submitted to the Department of Forestry and Fire Protection. The act authorizes the State Board of Forestry and Fire Protection to exempt from some or all of those provisions of the act a person engaging in specified forest management activities, as prescribed.

This bill would make various nonsubstantive changes in those provisions governing exemptions for forest management activities.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4584 of the Public Resources Code is
- 2 amended to read:
- 3 4584. Upon determining that this exemption is consistent with
- 4 the purposes of this chapter, the board may exempt from this
- 5 chapter, or portions of this chapter, a person engaged in forest
- 6 management whose activities are limited to any of the following:

1 (a) The cutting or removal of trees for the purpose of
2 constructing or maintaining a right-of-way for utility lines.

3 (b) The planting, growing, nurturing, shaping, shearing, removal,
4 or harvest of immature trees for Christmas trees or other ornamental
5 purposes or minor forest products, including fuelwood.

6 (c) The cutting or removal of dead, dying, or diseased trees of
7 any size.

8 (d) Site preparation.

9 (e) Maintenance of drainage facilities and soil stabilization
10 treatments.

11 (f) Timber operations on land managed by the Department of
12 Parks and Recreation.

13 (g) (1) The one-time conversion of less than three acres to a
14 nontimber use. A person, whether acting as an ~~individual or~~
15 *individual*, as a member of a partnership, or as an officer or
16 employee of a corporation or other legal entity, shall not obtain
17 more than one exemption pursuant to this subdivision in a five-year
18 period. If a partnership has as a member, or if a corporation or
19 other legal entity has as an officer or employee, a person who has
20 received this exemption within the past five years, whether as an
21 ~~individual or individual~~, as a member of a partnership, or as an
22 officer or employee of a corporation or other legal entity, then that
23 partnership, corporation, or other legal entity is not eligible for
24 this exemption. "Person," for purposes of this subdivision, means
25 an individual, partnership, corporation, or other legal entity.

26 (2) (A) Notwithstanding Section 4554.5, the board shall adopt
27 regulations that do all of the following:

28 (i) Identify the required documentation of a bona fide intent to
29 complete the conversion that an applicant will need to submit in
30 order to be eligible for the exemption in paragraph (1).

31 (ii) Authorize the department to inspect the sites approved in
32 conversion applications that have been approved on or after January
33 1, 2002, in order to determine that the conversion was completed
34 within the two-year period described in subparagraph (B) of
35 paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of
36 the California Code of Regulations.

37 (iii) Require the exemption pursuant to this subdivision to expire
38 if there is a change in timberland ownership. The person who
39 originally submitted an application for an exemption pursuant to
40 this subdivision shall notify the department of a change in

1 timberland ownership on or before five calendar days after a change
2 in ownership.

3 (iv) The board may adopt regulations allowing a waiver of the
4 five-year limitation described in paragraph (1) upon finding that
5 the imposition of the five-year limitation would impose an undue
6 hardship on the applicant for the exemption. The board may adopt
7 a process for an appeal of a denial of a waiver.

8 (B) The application form for the exemption pursuant to
9 paragraph (1) shall prominently advise the public that a violation
10 of the conversion exemption, including a conversion applied for
11 in the name of someone other than the person or entity
12 implementing the conversion in bona fide good faith, is a violation
13 of this chapter and penalties may accrue up to ten thousand dollars
14 (\$10,000) for each violation pursuant to Article 8 (commencing
15 with Section 4601).

16 (h) Easements granted by a right-of-way construction agreement
17 administered by the federal government if timber sales and
18 operations within or affecting these areas are reviewed and
19 conducted pursuant to the National Environmental Policy Act of
20 1969 (42 U.S.C. Sec. 4321 et seq.).

21 (i) (1) The cutting or removal of trees in compliance with
22 Sections 4290 and 4291 that eliminates the vertical continuity of
23 vegetative fuels and the horizontal continuity of tree crowns for
24 the purpose of reducing flammable materials and maintaining a
25 fuel break for a distance of not more than 150 feet on each side
26 from an approved and legally permitted structure that complies
27 with the California Building Standards Code, when that cutting or
28 removal is conducted in compliance with this subdivision. For
29 purposes of this subdivision, an “approved and legally permitted
30 structure” includes only structures that are designed for human
31 occupancy and garages, barns, stables, and structures used to
32 enclose fuel tanks.

33 (2) (A) The cutting or removal of trees pursuant to this
34 subdivision is limited to cutting or removal that will result in a
35 reduction in the rate of fire spread, fire duration and intensity, fuel
36 ignitability, or ignition of the tree crowns and shall be in
37 accordance with any regulations adopted by the board pursuant to
38 this section.

39 (B) Trees shall not be cut or removed pursuant to this
40 subdivision by the clearcutting regeneration method, by the seed

1 tree removal step of the seed tree regeneration method, or by the
2 shelterwood removal step of the shelterwood regeneration method.

3 (3) (A) Surface fuels, including logging slash and debris, low
4 brush, and deadwood, that could promote the spread of wildfire
5 shall be chipped, burned, or otherwise removed from all areas of
6 timber operations within 45 days from the date of commencement
7 of timber operations pursuant to this subdivision.

8 (B) (i) All surface fuels that are not chipped, burned, or
9 otherwise removed from all areas of timber operations within 45
10 days from the date of commencement of timber operations may
11 be determined to be a nuisance and subject to abatement by the
12 department or the city or county having jurisdiction.

13 (ii) The costs incurred by the department, city, or county, as the
14 case may be, to abate the nuisance upon a parcel of land subject
15 to the timber operations, including, but not limited to, investigation,
16 boundary determination, measurement, and other related costs,
17 may be recovered by special assessment and lien against the parcel
18 of land by the department, city, or county. The assessment may
19 be collected at the same time and in the same manner as ordinary
20 ad valorem taxes, and shall be subject to the same penalties and
21 the same procedure and sale in case of delinquency as is provided
22 for ad valorem taxes.

23 (4) All timber operations conducted pursuant to this subdivision
24 shall conform to applicable city or county general plans, city or
25 county implementing ordinances, and city or county zoning
26 ordinances. This paragraph does not authorize the cutting, removal,
27 or sale of timber or other solid wood forest products within an area
28 where timber harvesting is prohibited or otherwise restricted
29 pursuant to the rules or regulations adopted by the board.

30 (5) (A) The board shall adopt regulations, initially as emergency
31 regulations in accordance with subparagraph (B), that the board
32 considers necessary to implement and to obtain compliance with
33 this subdivision.

34 (B) The emergency regulations adopted pursuant to
35 subparagraph (A) shall be adopted in accordance with the
36 Administrative Procedure Act (Chapter 3.5 (commencing with
37 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
38 Code). The adoption of emergency regulations shall be deemed to
39 be an emergency and necessary for the immediate preservation of
40 the public peace, health, and safety, or general welfare.

(6) (A) Notwithstanding paragraph (1), the board may exempt from this chapter, or portions of this chapter, a person engaged in forest management whose activities are limited to the cutting or removal of trees on the person's property in compliance with Sections 4290 and 4291 that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuel break for a distance of not more than 300 feet on each side from an approved and legally permitted habitable structure, when that cutting or removal is conducted in compliance with this subdivision and all of the following conditions are met:

(i) The notice of exemption is prepared, signed, and submitted by a registered professional forester to the department.

(ii) For the areas between 150 and 300 feet from the habitable structure, the operations meet all of the following provisions:

(I) The residual stocking standards are consistent with Sections 913.2, 933.2, and 953.2 of Title 14 of the California Code of Regulations, as appropriate.

(II) Activities within this area will increase the quadratic mean diameter of the stand.

(III) The residual stand consists primarily of healthy and vigorous dominant and codominant trees from the preharvest stand, well distributed though the harvested area.

(IV) Postharvest slash treatment and stand conditions will lead to more moderate fire behavior in the professional judgment of the registered professional forester who submits the notice of exemption.

(V) Any additional guidance for slash treatment and postharvest stand conditions and any other issues deemed necessary that are consistent with this section, as established by the board.

(B) For purposes of this paragraph, "habitable structure" means a building that contains one or more dwelling units or that can be occupied for residential use. Buildings occupied for residential use include single family homes, multidwelling structures, mobile and manufactured homes, and condominiums. For purposes of this paragraph "habitable structure" does not include commercial, industrial, or incidental buildings such as detached garages, barns, outdoor sanitation facilities, and sheds.

(C) The department shall evaluate the effects of this paragraph and shall report its recommendations, before the paragraph becomes

1 inoperative, to the Legislature based on that evaluation. The report
2 shall be submitted in compliance with Section 9795 of the
3 Government Code.

4 (D) The board shall adopt regulations to implement this
5 paragraph no later than January 1, 2016.

6 (E) This paragraph shall become inoperative three years after
7 the effective date of regulations adopted by the board pursuant to
8 subparagraph (D) but no later than January 1, 2019.

9 (j) (1) The harvesting of trees, limited to those trees that
10 eliminate the vertical continuity of vegetative fuels and the
11 horizontal continuity of tree crowns, for the purpose of reducing
12 the rate of fire spread, duration and intensity, fuel ignitability, or
13 ignition of tree crowns.

14 (2) The board may authorize an exemption pursuant to paragraph
15 (1) only if the tree harvesting will decrease fuel continuity and
16 increase the quadratic mean diameter of the stand, and the tree
17 harvesting area will not exceed 300 acres.

18 (3) Except as provided in paragraph (11), the notice of
19 exemption, which shall be known as the Forest Fire Prevention
20 Exemption, may be authorized only if all of the conditions specified
21 in paragraphs (4) to (10), inclusive, are met.

22 (4) A registered professional forester shall prepare the notice
23 of exemption and submit it to the director, and include a map of
24 the area of timber operations that complies with the requirements
25 of paragraphs (1), (3), (4), and (7) to (12), inclusive, of subdivision
26 (x) of Section 1034 of Title 14 of the California Code of
27 Regulations.

28 (5) (A) The registered professional forester who submits the
29 notice of exemption shall include a description of the preharvest
30 stand structure and a statement of the postharvest stand stocking
31 levels.

32 (B) The level of residual stocking shall be consistent with
33 maximum sustained production of high-quality timber products.
34 The residual stand shall consist primarily of healthy and vigorous
35 dominant and codominant trees from the preharvest stand. Stocking
36 shall not be reduced below the standards required by any of the
37 following provisions that apply to the exemption at issue:

38 (i) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
39 (1) of subdivision (a) of Section 913.3 of Title 14 of the California
40 Code of Regulations.

1 (ii) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
2 (1) of subdivision (a) of Section 933.3 of Title 14 of the California
3 Code of Regulations.

4 (iii) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph
5 (1) of subdivision (a) of Section 953.3 of Title 14 of the California
6 Code of Regulations.

7 (C) If the preharvest dominant and codominant crown canopy
8 is occupied by trees less than 14 inches in diameter at breast height,
9 a minimum of 100 trees over four inches in diameter at breast
10 height shall be retained per acre for Site I, II, and III lands, and a
11 minimum of 75 trees over four inches in diameter at breast height
12 shall be retained per acre for Site IV and V lands.

13 (6) (A) The registered professional forester who submits the
14 notice shall include selection criteria for the trees to be harvested
15 or the trees to be retained. In the development of fuel reduction
16 prescriptions, the registered professional forester should consider
17 retaining habitat elements, where feasible, including, but not
18 limited to, ground level cover necessary for the long-term
19 management of local wildlife populations.

20 (B) All trees that are harvested or all trees that are retained shall
21 be marked or sample marked by or under the supervision of a
22 registered professional forester before felling operations begin.
23 The board shall adopt regulations for sample marking for this
24 section in Title 14 of the California Code of Regulations. Sample
25 marking shall be limited to homogenous forest stand conditions
26 typical of plantations.

27 (7) (A) The registered professional forester submitting the
28 notice, upon submission of the notice, shall provide a confidential
29 archaeology letter that includes all the information required by
30 any of the following provisions that apply to the exemption at
31 issue:

32 (i) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
33 of Section 929.1 of Title 14 of the California Code of Regulations,
34 and include site records if required pursuant to subdivision (g) of
35 that section or pursuant to Section 929.5 of Title 14 of the
36 California Code of Regulations.

37 (ii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
38 of Section 949.1 of Title 14 of the California Code of Regulations,
39 and include site records if required pursuant to subdivision (g) of

1 that section or pursuant to Section 949.5 of Title 14 of the
2 California Code of Regulations.

3 (iii) Paragraphs (2) and (7) to (11), inclusive, of subdivision (c)
4 of Section 969.1 of Title 14 of the California Code of Regulations,
5 and include site records if required pursuant to subdivision (g) of
6 that section or pursuant to Section 969.5 of Title 14 of the
7 California Code of Regulations.

8 (B) The director shall submit a complete copy of the confidential
9 archaeological letter and two copies of all required archaeological
10 or historical site records to the appropriate Information Center of
11 the California Historical Resource Information System within 30
12 days from the date of notice submittal to the director. Before
13 submitting the notice to the director, the registered professional
14 forester shall send a copy of the notice to Native Americans, as
15 defined in Section 895.1 of Title 14 of the California Code of
16 Regulations.

17 (8) Only trees less than 18 inches in stump diameter, measured
18 at eight inches above ground level, may be removed. However,
19 within 500 feet of a legally permitted structure, or in an area
20 prioritized as a shaded fuel break in a community wildfire
21 protection plan approved by a public fire agency, if the goal of
22 fuel reduction cannot be achieved by removing trees less than 18
23 inches in stump diameter, trees less than 24 inches in stump
24 diameter may be removed if that removal complies with this section
25 and is necessary to achieve the goal of fuel reduction. A fuel
26 reduction effort shall not violate the canopy closure regulations
27 adopted by the board on June 10, 2004, and as those regulations
28 may be amended.

29 (9) (A) This subparagraph applies to areas within 500 feet of
30 a legally permitted structure and in areas prioritized as a shaded
31 fuel break in a community wildfire protection plan approved by a
32 public fire agency. The board shall adopt regulations for the
33 treatment of surface and ladder fuels in the harvest area, including
34 logging slash and debris, low brush, small trees, and deadwood,
35 that could promote the spread of wildfire. The regulations adopted
36 by the board shall be consistent with the standards in the board's
37 "General Guidelines for Creating Defensible Space" described in
38 Section 1299.03 of Title 14 of the California Code of Regulations.
39 Postharvest standards shall include vertical spacing between fuels,

horizontal spacing between fuels, maximum depth of dead ground surface fuels, and treatment of standing dead fuels, as follows:

(i) Ladder and surface fuels shall be spaced to achieve a vertical clearance distance of eight feet or three times the height of the postharvest fuels, whichever is the greater distance, measured from the base of the live crown of the postharvest dominant and codominant trees to the top of the surface fuels.

(ii) Horizontal spacing shall achieve a minimum separation of two to six times the height of the postharvest fuels, increasing spacing with increasing slope, measured from the outside branch edges of the fuels.

(iii) Dead surface fuel depth shall be less than nine inches.

(iv) Standing dead or dying trees and brush generally shall be removed. That material, along with live vegetation associated with the dead vegetation, may be retained for wildlife habitat when isolated from other vegetation.

(B) This subparagraph applies to all areas not described in subparagraph (A).

(i) The postharvest stand shall not contain more than 200 trees over three inches in diameter per acre.

(ii) Vertical spacing shall be achieved by treating dead fuels to a minimum clearance distance of eight feet measured from the base of the live crown of the postharvest dominant and codominant trees to the top of the dead surface fuels.

(iii) All logging slash created by the timber operations shall be treated to achieve a maximum postharvest depth of nine inches above the ground.

(C) The standards required by subparagraphs (A) and (B) shall be achieved on approximately 80 percent of the treated area. The treatment shall include chipping, removing, or other methods necessary to achieve the standards. Ladder and surface fuel treatments, for any portion of the exemption area where timber operations have occurred, shall be done within 120 days from the start of timber operations on that portion of the exemption area or by April 1 of the year following surface fuel creation on that portion of the exemption area if the surface fuels are burned.

(10) Timber operations shall comply with the requirements of paragraphs (1) to (10), inclusive, of subdivision (b) of Section 1038 of Title 14 of the California Code of Regulations. Timber operations in the Lake Tahoe region shall comply instead with the

requirements of paragraphs (1) to (16), inclusive, of subdivision (f) of Section 1038 of Title 14 of the California Code of Regulations.

(11) A notice of exemption, which shall be known as the Forest Fire Prevention Pilot Project Exemption, may be authorized if all of the following conditions are met:

(A) The conditions specified in paragraphs (2), (4), (6), (7), and (10) are met.

(B) Only trees less than 24 inches in stump diameter, measured at eight inches above ground level, may be removed. A fuel reduction effort shall not violate the canopy closure regulations adopted by the board on June 10, 2004, and as those regulations may be amended.

(C) (i) The registered professional forester who submits the notice of exemption shall include a description of the preharvest stand structure and a statement of the postharvest stand stocking levels.

(ii) The level of residual stocking shall be consistent with maximum sustained production of high-quality timber products. The residual stand shall consist primarily of healthy and vigorous dominant and codominant trees from the preharvest stand. Where present prior to operations, the overstory canopy closure for trees greater than 12 inches in diameter at breast height shall not be reduced below 50 percent. Stocking shall be met with the largest trees available prior to harvest and shall not be reduced below the standards required by any of the following provisions that apply to the exemption at issue:

(I) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph (1) of subdivision (a) of Section 913.3 of Title 14 of the California Code of Regulations.

(II) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph (1) of subdivision (a) of Section 933.3 of Title 14 of the California Code of Regulations.

(III) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph (1) of subdivision (a) of Section 953.3 of Title 14 of the California Code of Regulations.

(iii) If the preharvest dominant and codominant crown canopy is occupied by trees less than 14 inches in diameter at breast height, a minimum of 100 trees over four inches in diameter at breast height shall be retained per acre for Site I, II, and III lands, and a

1 minimum of 75 trees over four inches in diameter at breast height
2 shall be retained per acre for Site IV and V lands. The retained
3 trees shall be the largest trees available prior to harvest.

4 (D) The activities conducted pursuant to this paragraph occur
5 in the Sierra Nevada Region as defined in subdivision (f) of Section
6 33302, in Modoc, Siskiyou, or Trinity Counties, or in any
7 combination of these areas.

8 (E) All activities conducted pursuant to this paragraph occur
9 within the most recent version of the department's Fire Hazard
10 Severity Zone Map in the moderate, high, and very high fire threat
11 zones.

12 (F) The department shall maintain records regarding the use of
13 the exemption granted in this paragraph in order to evaluate the
14 impact of the exemption on fuel reduction and natural resources
15 in areas where the exemption has been used.

16 (G) This paragraph shall become inoperative three years after
17 the effective date of regulations adopted by the board implementing
18 this paragraph.

19 (12) After the timber operations are complete, the department
20 shall conduct an onsite inspection to determine compliance with
21 this subdivision and whether appropriate enforcement action should
22 be initiated.